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In the

Supreme Court of the United States

OCTOBER TERM, 1944

Number 853

L. C. AKINS, *Petitioner,*

v.

THE STATE OF TEXAS, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

A. S. BASKETT,
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Dallas 2, Texas.

and

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To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States of America:

Your petitioner, L. C. Akins, respectfully submits his petition for a writ of certiorari to review the judgment and decree of the Court of Criminal Appeals of Texas in the above entitled cause, and for such petition says:

(1) That your petitioner is a citizen of the United States and a member of the African, or negro, race.

(2) That the Court of Criminal Appeals of Texas is the highest court, and the court of last resort, in criminal matters in Texas under the constitution and laws of the State of Texas.

(3) That during the January term, A. D. 1943, in the Criminal District Court of Dallas County, Texas, the grand jury in and for said court returned a bill of indictment into said court against your petitioner charging him with the offense of murder with malice of one V. L. Morris, alleged to have occurred in Dallas County, Texas, on the 15th day of September, A. D. 1941.

(4) That thereafter, on the 29th day of March, A. D. 1943, your petitioner was put to trial under said indictment in said Criminal District Court of Dallas County, Texas, and upon said trial was convicted of said offense and his punishment assessed at death.

(5) That thereupon he duly appealed from said judgment of conviction to the Court of Criminal Appeals of Texas, and said Court of Criminal Appeals thereafter, on the 21st day of June, A. D. 1944, duly affirmed said judgment of the trial court.

That thereafter this petitioner filed in said Court of Criminal Appeals his motion for a rehearing in this cause, which said motion was by said Court of Criminal Appeals in all things overruled on the 18th day of October, A. D. 1944. That thereby said judgment of conviction against this petitioner became final in so far as the courts of the State of Texas are concerned. This cause is reported in *Akins v. The State of Texas*, 182 Southwestern Reporter (2d series), page 723.

(6) That upon the trial of this cause in the trial court, as well as on appeal to said Court of Criminal Appeals of

Texas, two Federal questions were involved and in each instance decided against this petitioner, to-wit:

First

In the drawing of the grand jury panel from which the grand jury that returned the bill of indictment against this petitioner in this cause the jury commissioners discriminated against this petitioner, who is a negro and member of the African race, and discriminated against the negro or African race, on account of race and color, in violation of the Fourteenth Amendment to the Constitution of the United States, and he was thereby denied the equal protection of the law and denied due process of law in violation of said amendment to the Constitution of the United States.

Second

That this petitioner is being deprived of his life without due process of law for the reason that the duly elected, qualified and acting judge of the Criminal District Court of Dallas County, Texas, the Honorable Grover C. Adams, died on the 25th day of August, A. D. 1943, prior to the trial of this cause in said court, thereby causing a vacancy in the office of the judge of said court, and the Governor of Texas had not, at the time of the trial of this petitioner, filled said vacancy as provided by Article V, Section 28, of the Constitution of Texas, and no general election had intervened at which such vacancy in said office of the judge of said court could be filled; and at the time of the trial of your petitioner herein said vacancy in said office of judge of said court was still vacant by reason of the death

of Judge Adams. That Judge A. R. Stout, the judge of the 40th Judicial District of Ellis County, Texas, assumed to, and did preside over the said Criminal District Court of Dallas County, Texas, and over the trial of your petitioner in this cause, under and by virtue of an assignment by the Presiding Judge of the First Administrative Judicial District of Texas acting under an amendment to Section 5 of Article 200-a of the Revised Civil Statutes of Texas passed by the 48th Legislature of Texas, in 1943. Said amendment with reference to filling vacancies, or assigning other District Judges, to a District Court, in the event of a vacancy in the office of judge of a judge caused by death, is in direct conflict with Article V, Section 28 of the Constitution of the State of Texas, and is unconstitutional and void and conferred no authority on said Presiding Judge of the First Administrative Judicial District of Texas to assign the Judge of the 40th Judicial District of Texas to preside in said Criminal District Court of Dallas County, or to preside over the trial of this cause; and said Judge of the 40th Judicial District, Judge Stout, had no authority in law to so preside over the trial of this cause. He was neither a judge de facto or de jure of said Criminal District Court, and the proceedings so had in said Criminal District Court in this cause did not constitute due process of law.

(7) That upon the call of this cause for trial in said Criminal District Court, and before any announcement of ready for trial therein by this petitioner, your petitioner duly filed his motion in writing to quash the indictment herein because of discrimination against him and his race on account of race and color, in the selection of the grand

jury panel herein, and testimony was duly introduced thereunder, as will appear from this petitioner's Bill of Exceptions No. 1 as contained in the transcript of the record herein.

Said testimony discloses that by the United States Census of 1940 there were 336,851 white citizens of Dallas County, Texas, and 61,605 Negro citizens in Dallas County, Texas. That prior to the October Term, A. D. 1942, of the Criminal District Courts of Dallas County, Texas, no member of the Negro, or African, race had ever been a member of a Grand Jury in Dallas County. That after the reversal of the case of *Hill v. The State of Texas*, by this Court in June, A. D. 1942, one Negro was put on the Grand Jury for the October term, 1942, of said court, and one was put on the Grand Jury for the January, A. D, 1943, term of said Criminal District Court (the Grand Jury that returned the bill of indictment against your petitioner in this cause). That the Grand Jury Commissioners in selecting the Grand Jury panel from which said Grand Jury was chosen deliberately and intentionally limited the number of Negro citizens on said panel to one (1), and the name of that one so selected was intentionally and deliberately placed by them in such position on said panel of prospective Grand Jurors as to insure his serving. That thereby the Grand Jury that returned the bill of indictment in this cause against this petitioner was selected in such a manner that it discriminated against this petitioner and his race on account of race and color. That all other members of the Negro or African race except that one were intentionally and deliberately excluded from serving on said Grand Jury.

That such selection of said Grand Jury was an evasion of petitioner's rights under the Fourteenth Amendment to the Federal Constitution, and the same was an artful, as well as a tactful, evasion of the Constitutional rights of this petitioner, that there is a large number of Negroes qualified for Grand Jury service in Dallas County, Texas. Testimony was taken on behalf of said motion, which is contained in this petitioner's Bill of Exceptions No. 1 as contained in the Transcript of the Record herein. Said motion was overruled and exception noted.

(8) That upon the call of this cause for trial in the Criminal District Court of Dallas County, Texas, this petitioner, in limine, and before an announcement of ready herein by the petitioner, and before a plea was entered, duly filed herein and presented to the court his objections in writing to the trial of said cause before or in the Criminal District Court of Dallas County, Texas, and before the Honorable A. R. Stout, the District Judge for the 40th Judicial District of Texas in and for Ellis County, Texas, and for any proceedings of any character whatsoever in said court and before said Judge of the 40th Judicial District of Texas, because the regularly and duly elected, qualified and acting judge of said court, Judge Grover C. Adams, had theretofore died, thereby causing a vacancy in the office of judge of said Criminal District Court of Dallas County, Texas; that the Governor of Texas had not appointed the Honorable A. R. Stout or any one else to fill said vacancy and there had been no general election since the death of Judge Grover C. Adams in which the Honorable A. R. Stout had been elected to fill said vacancy; and

that the said A. R. Stout was assuming to act by virtue of an assignment thereto by the Presiding Judge of the First Administrative Judicial District of Texas under and by virtue of an amendment to Article 200-a, Section 5, of the Revised Civil Statutes of Texas. That said amendment is unconstitutional and void, and said assignment conferred no legal authority on the said A. R. Stout to preside over said Criminal District Court or the trial of this cause, and that by virtue of such trial at this time before said Judge A. R. Stout this petitioner would be denied a trial according to due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Upon the presentation of said objections the facts of the death of the judge of said Court, Judge Adams; that the Governor of Texas had not appointed a judge to fill the vacancy caused by the death of Judge Adams; and that Judge A. R. Stout, Judge of the 40th Judicial District Court of Ellis County, Texas, is assuming to act herein by virtue of an assignment by the Presiding Judge of the First Administrative Judicial District of Texas, and not by virtue of any appointment by the Governor of the State of Texas, were duly stipulated into the record as will appear from this petitioner's Bill of Exceptions No. 2 as contained in the Transcript of the Record in this cause.

Your petitioner submits herewith his Briefs under this Petition for a writ of certiorari, and a certified copy of the Transcript of the Record had in this cause in the Court of Criminal Appeals of Texas.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

(1) The decision of the Court of Criminal Appeals of Texas involves two important questions of Federal Law and of the Constitution of the United States.

(2) The decision of the Court of Criminal Appeals of the State of Texas herein was and is contrary to the numerous decisions of this court in applicable cases.

(3) The decision of the Court of Criminal Appeals of the State of Texas herein was such that the guaranties of equal protection of law to petitioner as provided by the Constitution were denied.

(4) The decision of the Court of Criminal Appeals was such as to deprive the Petitioner of life without due process of law in violation of the Constitution of the United States.

(5) The decision of the Court of Criminal Appeals of Texas herein involves an important question of Federal procedure, and so far departs from the usual course of procedure as to bring this case within the rule for review by this Honorable Court.

WHEREFORE, for the reasons stated, your Petitioner, L. C. Akins, respectfully prays that this court, by a writ of certiorari issued under the seal of this court, directed to the Judges of the Court of Criminal Appeals of the State of Texas, command and direct said Court of Criminal Appeals of Texas to certify to this court a full and complete transcript of the record had in this cause to the end that

same may be reviewed and determined by this court as provided by law, and that the judgment and sentence of the Criminal District Court of Dallas County, Texas, and the decision of the Court of Criminal Appeals of the State of Texas, be in all things reversed, and for such other and further relief to which your petitioner may be entitled.

PETITIONER FURTHER RESPECTFULLY PRAYS THE COURT that it issue its most gracious order directed to the Court of Criminal Appeals of the State of Texas commanding said court to stay further proceedings herein until this petition has been considered and determined by the court.

L C Akins
Petitioner.

UNITED STATES OF AMERICA
STATE OF TEXAS } ss.
COUNTY OF DALLAS.

I, L. C. Akins, being duly sworn depose and say that I am the petitioner in the above entitled cause; that I have read the foregoing petition, and that the same is true as I verily believe.

L C Akins

Subscribed and sworn to before me by the petitioner, L. C. Akins, on this, the 12th day of January, A. D. 1945.

A. S. Baskett

Notary Public in and for Dallas County, Texas.

A. S. Baskett

A. S. BASKETT,
416 Rio Grande Life Bldg.,
Dallas 2, Texas,

and

W. J. Durham

W. J. DURHAM,
P. O. Box 641,
Dallas 4-E, Texas,
Attorneys for the Petitioner.

We, A. S. Baskett and W. J. Durham, attorneys and counsellors at law, admitted to practice in the Supreme Court of the United States, hereby certify that we prepared the foregoing petition for a writ of certiorari and know the contents thereof; that the same is not made for the purpose of delay; and that in our opinion said petition is meritorious and well founded in law, and ought to be granted and the writ issued.

A. S. Baskett

A. S. BASKETT.

W. J. Durham

W. J. DURHAM.

In the

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THE STATE OF TEXAS,

Respondent.

The Respondent herein is hereby notified that the Petitioner will, on the 22nd day of January, A. D. 1945, upon the convening of court on that date, or as soon thereafter as the court will receive same, submit to the Supreme Court of the United States this Petitioner's motion and petition for a writ of certiorari in this cause, copies of said petition and of this Petitioner's Briefs under said petition are herewith submitted to you, said petition to be submitted to said Supreme Court at its courtroom at the Capitol, in the City of Washington, D. C.

A. S. BASKETT,
416 Rio Grande Life Bldg.,
Dallas 2, Texas.

and

W. J. DURHAM,
P. O. Box 641,
Dallas 4-E, Texas,
Attorneys for the Petitioner.

The foregoing notice is hereby accepted and a deliver
of a copy thereof, together with a copy of said petition fo
certiorari and petitioner's Brief under said petition, ar
hereby acknowledged.

Attorney General of Texas.

State's Attorney with the Court o
Criminal Appeals of Texas,
Attorneys for the Respondent.